



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XI

SENTENCING

[^{F1}Restriction of liberty orders]

[^{F1}245A Restriction of liberty orders.

- (1) Without prejudice to section 245D of this Act, where a person ^{F2} . . . is convicted of an offence [^{F3} punishable by imprisonment] (other than an offence the sentence for which is fixed by law) the court, ^{F4} . . . may [^{F5}, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention,] make an order under this section (in this Act referred to as a “restriction of liberty order”) in respect of him. ^{F6} . . .
 - (2) A restriction of liberty order may restrict the offender’s movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—
 - (a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;
 - (b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,^{F7}
- [In making a restriction of liberty order containing provision under subsection (2)(a), ^{F8}(2A) the court must ensure that the offender is not required, either by the order alone or the order taken together with any other relevant order or requirement, to be in any place or places for a period or periods totalling more than 12 hours in any one day.
- (2B) In subsection (2A), “other relevant order or requirement” means—
 - (a) any other restriction of liberty order in effect in respect of the offender at the time the court is making the order referred to in subsection (2A), and
 - (b) any restricted movement requirement under section 227ZF in effect in respect of the offender at that time.]

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 245A is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) A restriction of liberty order may be made for any period up to 12 months.
- (4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order^{F9} ...;
 - (b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and
 - (c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,
- and the court shall not make the order unless the offender agrees to comply with its requirements.
- (5) The clerk of the court by which a restriction of liberty order is made shall—
- (a) cause a copy of the order to be sent—
 - [to any person who is to be responsible for monitoring the offender's
 - ^{F10}(i)] compliance with the order; [^{F11} and
 - (ii) if the offender resides (or is to reside) in a place outwith the jurisdiction of the court making the order, to the clerk of a court within whose jurisdiction that place is;] and
 - (b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgment or certificate.
- (6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall [^{F12}—
- (a)] obtain and consider [^{F13} a [^{F14}written] report by an officer of a local authority about—
 - (i) the place or places proposed to be specified; and
 - ^{F15}(ia) the suitability of what is proposed (particularly with a view to maximising the prospect of the offender's compliance with the order and minimising the risk of reoffending by the offender);]
 - (ii)] the attitude of persons likely to be affected by the enforced presence there of the offender [^{F16}; and
 - (b) if it considers it necessary, hear the officer who prepared the report.]
- (7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.
- (8) The Secretary of State may by regulations prescribe—
- (a) which courts, or class or classes of courts, may make restriction of liberty orders;
 - (b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
 - (c) the class or classes of offenders in respect of which restriction of liberty orders may be made,
- and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.

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^{F17}(9)

(10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.

(11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.

^{F18}(11A) [A court shall not make a restriction of liberty order in respect of an offender who is under 16 years of age unless, having obtained a report on the offender from the local authority in whose area he resides, it is satisfied as to the services which the authority will provide for his support and rehabilitation during the period when he is subject to the order.]

(12) The Secretary of State may by regulations substitute for the period of—
(a) hours for the time being mentioned in [^{F19}subsection (2A)] above; or
(b) months for the time being mentioned in subsection (3) above,
such period of hours or, as the case may be, months as may be prescribed in the regulations.

(13) Regulations under this section shall be made by statutory instrument.

(14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.]

Textual Amendments

- F1** Ss. 245A-245I and preceding cross-heading inserted (20.10.1997 for specified purposes and 1.7.1998 otherwise) by 1997 c. 48, s. 5; S.I. 1997/2323, arts. 3, 5(1), **Sch. 1**
- F2** Words in s. 245A(1) repealed (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. **121(2)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 5
- F3** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. **50(3)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F4** Words in s. 245A(1) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. **50(3)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F5** Words in s. 245A(1) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. **50(3)(c)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F6** Words in s. 245A(1) repealed (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(2), 145(2), **Sch. 5**; S.S.I. 2004/420, **art. 3**, Sch. 5
- F7** Words in s. 245A(2) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 21(2)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F8** S. 245A(2A)(2B) inserted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 21(3)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F9** Words in s. 245A(4)(a) repealed (17.5.2022) by Management of Offenders (Scotland) Act 2019 (asp 14), s. 63(2), **sch. 1 para. 7(3)(d)**; S.S.I. 2022/94, reg. 2(2)(l) (with regs. 1(2), 3(4))

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- F10** Words in s. 245A(5)(a) renumbered as s. 245A(5)(a)(i) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(2)(a)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F11** S. 245A(5)(a)(ii) and preceding word inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 43(2)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F12** Words in s. 245A(6) renumbered (4.10.2004) as s. 245(6)(a) by virtue of Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 35(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F13** Words in s. 245A(6)(a) substituted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5, ss. 25, 27(1), {Sch. para. 35(b)}; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F14** Word in s. 245A(6)(a) inserted (11.10.2019) by Management of Offenders (Scotland) Act 2019 (asp 14), s. 63(2), **sch. 1 para. 5(4)(a)**; S.S.I. 2019/309, reg. 2, sch.
- F15** S. 245A(6)(a)(ia) inserted (11.10.2019) by Management of Offenders (Scotland) Act 2019 (asp 14), s. 63(2), **sch. 1 para. 5(4)(b)**; S.S.I. 2019/309, reg. 2, sch.
- F16** S. 245A(6)(b) and preceding word inserted (4.10.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 35(c)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F17** S. 245A(9) repealed (1.4.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 39(4)**; S.S.I. 2016/13, art. 2, sch. (with art. 3)
- F18** S. 245A(11A) inserted (4.4.2005) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 121(3), 145(2)**; S.S.I. 2004/420, **art. 3**, Sch. 5
- F19** Words in s. 245A(12)(a) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 21(4)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)